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SUBJECT: NO TRUTH AND RECONCILIATION FOR INDONESIA

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Classified By: Political Officer Stanley J. Harsha, Reason 1.4 (d)

11. (SBU) Summary: On December 8, the Constitutional Court (CC) scrapped Indonesia's Truth and Reconciliation Commission, arguing that it was unconstitutional. There are mixed views here about the importance of this decision and the likely impact on the prosecution of past human rights abuses. Lack of accountability for past human rights abuses by Indonesian military (TNI) remains a blot on Indonesia's steadily improving human rights record. Since 2000, there have been three vehicles for dealing with specific internal cases of gross human rights abuses: the human rights court for post-2000 violations; ad hoc special courts established by Parliament (DPR) for pre-2000 cases; and, the Truth and Reconciliation Commission. The Commission, which was established in 2004 as a compromise human rights vehicle, has been criticized by activists and victims as too weak, since it was to focus solely on public testimony in return for immunity from prosecution and possible compensation for victims, without prosecution of violators. Its recent demise at the hands of the CC cuts off one avenue for victims of Suharto's 32 years of political assassinations, massacres and forced disappearances, but leaves the ad hoc court. The likelihood of any meaningful activity in this forum, however, is slight, so the demise of the flawed but potentially useful commission is a setback for human rights in Indonesia. This Commission was to deal with internal human rights cases only, not violations by the TNI in East Timor which has its own mechanism. End summary.

12. (U) The Constitutional Court's December 8 ruling that Indonesia's Truth and Reconciliation Commission (KKR) is unconstitutional killed a flawed but potentially useful venue for victims of pre-2000 human rights abuses. The KKR Act authorized the KKR to investigate, summon suspected perpetrators and explain gross human rights violations. The Act also gave KKR the power to recommend amnesty for perpetrators and propose compensation for victims to the President. (See ref tel A). The KKR is authorized to pursue any case designated by the DPR as being a gross human rights violation which occurred before the year 2000, the year the Human Rights Court was established as an alternative means of settling cases of human rights violations. Because the KKR could be used as an alternative to criminal prosecution, many activists have opposed the Act as helping violators to avoid justice. One article that was objectionable to human rights activists would have authorized the KKR to recommend amnesty to confessed perpetrators over the objections of victims. Another contested article stipulated that once amnesty has been granted, the victim may not pursue an investigation by the National Human Rights Commission (Komnas HAM).

Ruling Confuses Human Rights Lawyers

¶3. (U) The CC's decision surprised the human rights community, which had only asked the Court to rule on several articles in the Act, and did not expect the entire KKR Act to be ruled unconstitutional. Human rights groups had asked the court to consider whether victims should be compensated before perpetrators are granted amnesty and whether resolved cases could still be re-tried in criminal courts. Instead, the CC went beyond the scope of the appeal by ruling eight-to-one that the entire KKR Act is unconstitutional. In an unclear ruling that left human rights lawyers confused, the judges said it is "legally illogical for requests for compensation, restitution, rehabilitation and amnesty" to be filed before an investigation determines that gross human rights violations occurred, according to media reports. The ruling also questioned KKR power to recommend immunity from prosecution. The ruling stated that the KKR process did not encourage people to settle cases through the commission.

Justices Influenced by Ideology

¶4. (C) Komnas HAM Chief Abdul Hakim Garuda Nusantara told us the decision shows that there "is no common understanding" among the President, the Attorney General, Ministry of Justice, the Foreign Ministry and the CC on how to proceed with human rights cases. He noted that the decision might be explained by either inexperience or ideological bias by some of the justices, noting that two of the judges are retired military judges with conservative anti-communist views. These justices might have wanted to head off cases raised by victims of the 1965 pogrom against suspected communists.

¶5. (SBU) The GOI gave a brief response on the KKR decision.

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Presidential spokesman Andi Mallarangeng said the government would study the ruling and its implications, the media reported. State Secretary Yusril Mahendra, whose conservative views do not reflect President Yudhoyono's professed desire to resolve human rights cases, told the media that victims should "move forward," using district courts and ad hoc human rights tribunals, but added that it is difficult to resolve these cases through the human right courts because "the witnesses and suspects have generally all died." Despite President Yudhoyono's verbal support for the KKR mechanism, human rights groups often question his resolve in seeing the KKR activated, noting that two years had passed since the KKR legislation was enacted and that President Yudhoyono had not selected the KKR's 21 members from a list of 42 names submitted to him last August. This lack of progress in forming the KKR may also have influenced the CC decision.

Parliament Wants to Clip Court's Wings

¶6. (U) Indonesian Democratic Party of Struggle (PDI-P) -- whose members were victims of the 1997-98 kidnappings and disappearances of party members -- responded to the CC decision with a December 12 petition to the DPR calling for the CC's powers to be curtailed, according to media reports. The petitioners said the CC's powers should be limited to judicial review and should not be allowed to annul contested laws or their articles, but rather return them to the DPR to be revised to conform with the Constitution. House legislation body deputy chairman Bomer Pasaribu told the media that a bill is being drafted to substantially reduce the powers of the CC. The former chair of the special committee that drafted the KKR law, PDI-P lawmaker Sidharto Danusubroto, told the media that the "President should issue a government regulation in lieu of law or a presidential instruction to rehabilitate victims of human rights abuses

and their families while the House is creating a new (KKR) law."

¶7. (C) There is a long backlog of pre-2000 human rights cases which the KKR was supposed to address. Komnas HAM has declared many of these cases to be gross violations of human rights. However, the AGO has refused to prosecute the cases, in some instances sending the cases back to Komnas HAM for procedural reasons, while at other times stating that the DPR must first declare the incidents as gross human rights violations before they can be prosecuted. The DPR has refused to act in many cases, and in 2002 it declared the 1997-98 Trisakti and Semanggi massacres not to be gross human rights violations and has not revisited this conclusion despite lobbying by human rights and victims, groups. Regarding this merry-go-round, Hakim told us Komnas HAM has finished its task by investigating the cases and finding gross human rights violations. "Our task and mandate is limited to inquiry and giving conclusions to the Attorney General. The next task is up to the Attorney General. If he agrees that these are gross human rights violations, he should investigate." Hakim believes the AGO could investigate pre-2000 cases further based on Komnas HAM findings, while the AGO maintains that a political decision is needed by the DPR to declare the cases to be gross human rights violations before that office can act. Human rights lawyers agree that the law is unclear on this point.

¶8. (U) The major unresolved cases of gross violations of human rights proposed for the KKR included: the 1965 massacres; the 1984 Tanjung Priok massacre; the 1989 Talungsari, Lampung massacre; the 1997-98 Trisakti, Semanggi I and Semanggi II massacres; the May 1998 riot/massacres; and the 1997-98 forced disappearances.

President Has Power to Bring Justice

¶9. (C) Hakim and other human rights defenders agree that despite AGO and DPR inaction, President Yudhoyono has the power to instigate action if he has the political will. "If SBY is brave, this is easy," said Usman Hamid, coordinator of the Commission for Missing Persons and Victims of Violence, referring to the Trisakti/Semanggi massacres. Usman and several other human rights leaders told us that Yudhoyono himself does not have any skeletons to hide but that the military is still too powerful an influence for his government to pursue senior officers who are implicated in these crimes. Noting that unless the government pursues these old crimes, there will be future ones, Hakim added, "You have a culture of impunity and irresponsibility by the military and government that is so strong that they use arbitrary power to stall this initiative" (human rights

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justice). Right-wing, staunchly anti-communist members of the Islamic community also opposed the KKR because it would have provided an avenue of justice and compensation for victims of the 1965 anti-communist pogrom, Hakim said. (Muslim groups carried out most of those killings).

¶10. (C) Comment: Human rights groups were just mildly disappointed with the demise of the Truth and Reconciliation Commission in that the KKR was a flawed mechanism to bring real justice for the victims and seemed to be going nowhere due to a lack of political will. However, there are dozens of victims and relatives who continue to demand justice, sometimes after years or even decades have passed. The voice of civil society is growing louder in Indonesia, so the GOI will feel increasing pressure to find a way forward. Furthermore, the GOI's domestic and international credibility as a nation that upholds human rights and rule of law is at stake. The USG should continue to press Indonesian officials on what the GOI is doing to solve these cases and to seek a replacement for the KKR mechanism. The Yudhoyono administration probably also is aware that the culture of

impunity that pervades Indonesian society is as much a threat to Indonesia's democracy as it is to human rights. End Comment.

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